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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,063	07/25/2003	John E. Hartman	HAR43 P-300	2218

277 7590 03/09/2004

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EXAMINER

HAYES, BRET C

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 03/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/627,063

Applicant(s)

HARTMAN, JOHN E.

Examiner

Bret C Hayes

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-20 is/are rejected.
- 7) ☒ Claim(s) 14-20 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20030725.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because in line 2, "collars include" should be --collar includes--. Correction is required. See MPEP § 608.01(b).

Claim Objections

2. There is no claim 13. Claims 14 – 20 are objected to as being misnumbered.
3. Further, claim 15, line 2, recites "metal" twice. One recitation is adequate.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claim 17 rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a supporting collar having an outer edge, a plurality of slots extending inwardly from the outer edge and each having a narrowed throat section and an expanded seat section, and a plurality of frusto-conical surfaces in communication with the slots, does not reasonably provide enablement for these limitations applying to the potted plant as claimed. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. Examiner suggests the claim be rewritten to have these limitations apply to the supporting collar similar to that recited in claim 1.

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6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

7. Claims 5, 6, 11 and 17 – 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claim 5 recites the limitation "at least one stop member component" in line 1. There is insufficient antecedent basis for this limitation in the claim.

9. Claim 6 recites the limitation "the at least one stop member component" in line 1. There is insufficient antecedent basis for this limitation in the claim.

10. Claim 11 recites the limitation "the slots" in line 1. There is insufficient antecedent basis for this limitation in the claim.

11. Claim 17 recites the limitations "the at least one support collar" in line 10, and "the supporting collar" in lines 10 and 11. There is insufficient antecedent basis for these limitations in the claim.

12. Any unspecified claim is rejected as being dependent upon a rejected base claim.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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14. Claims 1 – 12 and 14 – 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis in view of US Patent No. 4,875,653 to Connolly.

15. Re – claim 1, Lewis discloses the claimed invention including at least one support collar comprising at least one inner aperture, an outer edge, a plurality of holes and a plurality of surfaces in communication with the holes; a plurality of support members; and a plurality of stop members connected to the support members, wherein the stop members are seated against the surfaces of the collar and prevent downward movement of the collar with respect to the support members. However, Lewis does not disclose 1) the holes being slots, 2) the surfaces being frusto-conical, 3) the support members being explicitly flexible, and 4) the stop members being seated within the frusto-conical surfaces of the collar.

16. Re – 1) Connolly teaches a slot, see Fig. 6, for example, in the same field of endeavor for the purpose of supporting a pot. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lewis to substitute the slot as taught by Connolly for the hole in order to support a pot.

17. Re – 2 and 4) it would have been obvious to one having ordinary skill in the art at the time the invention was made to use frusto-conical surfaces, since there is no invention in merely changing the shape or form of an article without changing its function except in a design patent. *Eskimo Pie Corp. v. Levous et al.*, 3 USPQ 23. Further, Connolly teaches the slot extending at an angle in the same field of endeavor for the purpose of capturing a cord bead in a locked position. The angle is analogous to a frusto-conical surface in function.

18. Re – 3) it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the support members be flexible, since it has been held to be within

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the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a flexible support member, since it was known in the art that flexible support members, such as string, rope, twine, etc. are used in the making of pot hangers.

19. Re – claim 2, Lewis in view of Connolly discloses the claimed invention except for the slots snappably receiving the support members. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the slots snappably receive the support members, since the equivalence of slots which snappably receive members and a ball and socket interlocking device for their use in the suspension art and the selection of any known equivalents to a ball and socket interlocking device would be within the level of ordinary skill in the art.

20. Re – claim 3, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute cable or rope for the cord taught by Connolly, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

21. Re – claim 4, Lewis in view of Connolly discloses the stop member comprising one component.

22. Re – claim 5, Lewis in view of Connolly discloses the stop member being crimped, glued, welded, or otherwise fixedly attached to the flexible support member.

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23. Re – claim 6, Lewis in view of Connolly discloses the stop member being spherically shaped.

24. Re – claim 7, Lewis in view of Connolly discloses the supporting collar comprising a substantially planar shape.

25. Re – claim 8, Lewis in view of Connolly discloses the supporting collar comprising plastic, metal, wood, or any composite or combination thereof.

26. Re – claim 9, Lewis in view of Connolly discloses the assembly further comprising a swivel support, see Fig. 1, 6 and 7, for example, “swivel arm”.

27. Re – claim 10, Lewis in view of Connolly discloses the claimed invention including a length of the flexible support member being slidably adjustable. Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make a length of the flexible support member adjustable, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

28. Re – claim 11, see claim 2 above.

29. Re – claim 12, see claim 3 above.

30. Re – claim 14, see claim 7 above.

31. Re – claim 15, see claim 8 above.

32. Re – claim 16, see claim 9 above.

33. Re – claims 17 – 20, see above rejections of like claims.

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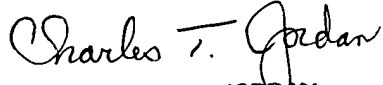
Conclusion

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (703) 306 – 0553. The examiner can normally be reached Monday through Friday from 5:30 am to 3:00 pm, Eastern Standard Time.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Jordan, can be reached at (703) 306 – 4159. The fax number is (703) 872 – 9306.

bh

3/7/04


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